Serial No. 10/711,981
Attorney Docket No. RSW920040131US1
Responsive to Final Office Action dated 7/26/2006

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Chen,	) Serial No. 10/711,981
	)
Applicant,	) Docket No. RSW920040131US1
	)
For: Algorithm for Minimizing Rebate Value Due to SLA Breach in a Utility Computing Environment	) Art Unit 2155
	)
	) Examiner Duong
Filed: 10/18/2004	)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

October 25, 2006

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In further response to the examiner's final office action mailed 07/26/2006, applicant files this pre-appeal brief request for review.

I. Claim Rejections under 35 U.S.C. § 103

The examiner rejected claims 1 - 3 under 35 U.S.C. 103(a) as being unpatentable over Gandhi, US 2005/0120102 A1, in view of Sankaranarayan, US 6,799,208 and further in view of Rolia US 2005/0240668 A1.

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The issue for the Pre-Appeal Brief Review is whether Ghandi, Sankaranarayan, and Rolia alone or together disclose the limitation "determining the minimum total rebate payable by the service provider for the breach" added to claims 1-3 in the response to the office action of July 26, 2006.

The examiner on pages 3-4 of the final office action cites Rolia as teaching "responsive to a profiling tool indicating that the premium customer's available resource cannot provide an agreed service level resulting in a breach of the premium customer; so that the service provider minimizes a compensation to be paid to the premium customer." Although Rolia teaches the reallocation of resources by ranking customers based on the penalties imposed for a breach (page 10 paragraphs [0093] – [0094]), Rolia does not teach calculating the minimum total rebate, and reallocating the services accordingly. The amended claims in the present invention disclose determining the minimum total rebate caused by the breach, as supported by the specification at paragraph [0029] and FIG. 5.

The amended claims of the present invention include factors considered when determining the minimum total rebate: "wherein a decision to re-allocate the resource from the standard customer to the premium customer is based on the plurality of performance data, a plurality of customer information, a target list of standard customers, the status of the standard customer, and the status of the premium customer." Rolia does not disclose using a target list of standard customers and a target list of premium customers, nor does Rolia suggest using the combination of performance data, a plurality of customer information, a target list of standard customers, the status of the standard customer, and the status of the premium customer in allocating resources. Rolia on

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describes using a ranked list of customers by class of service or other terms from the customer SLA (page 10, paragraph [0094]).

In light of the distinctions made in the claim amendments in response to the office action data July 26, 2006, the applicant submits that claims 1-3 are not obvious over Ghandi, in view of Sankaranarayan, and in further view of Rolia.

Respectfully submitted,

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